

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGIL MITCHELL,

Plaintiff,

v.

Case No. 09-11467

DR. ZAKIUDDIN A. KHAN,

HON. AVERN COHN

Defendant.

MEMORANDUM AND ORDER
ADOPTING REPORT AND RECOMMENDATION (Doc. 152)
AND GRANTING DEFENDANT'S RENEWED MOTION FOR SUMMARY JUDGMENT
(Doc. 144)

I.

This is a pro se prisoner civil rights case. Plaintiff, an inmate in the Michigan Department of Corrections, asserts a claim against Dr. Zakiuddin A. Khan (Khan) under 42 U.S.C. § 1983 for violation of constitutional rights under the Eighth Amendment regarding the removal of his medical detail for a wheelchair. The events took place while plaintiff was housed at the Thumb Correctional Facility. The case was filed in April 2009. All defendants except Khan have been dismissed.¹ The matter was referred to a magistrate judge for all pretrial proceedings, before whom Khan filed a renewed motion for summary judgment (Doc. 144). On March 19, 2014, the magistrate judge issued a report and recommendation (MJRR), recommending that the motion be granted. (Doc.

¹Plaintiff's claims against Patricia Caruso, James Armstrong, Millicent Warren, Margaret J. Wenzel, W, Riley, Jones, Mary E. Hynes were dismissed in February of 2010.. (Docs. 44, 48). Plaintiff's claims against Correctional Medical Services were dismissed in August of 2012. (Docs. 109, 112).

152). For the reasons that follow, the magistrate judge's recommendations will be followed, the MJRR will be adopted, Khan's motion will be granted, and the case will be dismissed.

II.

This is Khan's second motion for summary judgment. On January 30, 2012, Defendant Khan filed his first motion for summary judgment, asserting that plaintiff's allegations regarding the discontinuance of the wheelchair merely stated a medical malpractice claim that is not cognizable under section 1983. (Doc. 102.) The magistrate judge recommended that the motion be denied (Doc. 109) essentially on the grounds that the motion raised arguments appropriate to a motion to dismiss and plaintiff had sufficiently alleged a plausible claim against Khan. The Court, over Khan's objection (Doc. 110), adopted the MJRR. (Doc. 112).

On September 11, 2013, Khan filed a renewed motion for summary judgment (Doc. 144). The magistrate judge recommends that the motion be granted because the record shows no triable issue on whether Khan's actions violated plaintiff's Eighth Amendment rights. Rather the law and facts point to only one reasonable conclusion—Khan's actions did not amount to a violation under § 1983. Neither party has filed objections to the MJRR and the time for filing objections has passed.

III.

The failure to file objections to the MJRR waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the MJRR releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge's analysis and conclusion.

IV.

Accordingly, for the reasons stated above, the MJRR is ADOPTED as the findings and conclusions of the Court. Khan's motion for summary judgment is GRANTED. This case is DISMISSED.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 23, 2014

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, April 23, 2014, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160